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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,944	11/07/2001	John N. Wesley	29589/36176	1109
4743	7590	08/18/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			CHORBAJI, MONZER R	
		ART UNIT	PAPER NUMBER	
			1744	

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/052,944	WESLEY, JOHN N.	
	Examiner	Art Unit	
	MONZER R CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 07 November 2001.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-42 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-42 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 November 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 08/09/2004.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED GENERAL OFFICE ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeJeune et al (U.S.P.N. 6,290,914) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claims 1; LeJeune et al discloses a fragrance assembly (10 and 100) including a receptacle (is made up of 20 and 102 such that in col.3, lines 13-15, LeJeune et al teaches that both parts are fastened together. The examiner considers 20 and 102 in figure 6 as equivalent to the receptacle in the instant claims. See lines 19-22. With a perimeter wall (unlabeled exterior wall of 20) and a fragrant element disposed within the receptacle (16 or 28) such that the three surfaces of the fragrant element is in substantially continuous contact with the perimeter wall (the three unlabeled surfaces of 28 in figure 12 are in continuous contact with the three unlabeled surfaces of 26),

However, LeJeune et al fails to specifically teach the use of polymeric material. Tendick, Sr., which is in the art of dispensing fragrance material, teaches the use of polymeric material (col.2, lines 62-65). As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the assembly of LeJeune et al by substituting one fragrant element for another since polymeric material has a lower cost and easier to be shaped into various configurations than other material (Tendick, Sr., col.3, lines 19-21).

With respect to claims 2-4, 6-11 and 16, LeJeune et al teaches the following: a wick with an ignitable end extends through a portion of the receptacle (102, 20 and 106), the container including an opening (the unlabeled top of 100), the receptacle includes a vent (the unlabeled opening in the interior wall of the receptacle for allowing the wick to go through), a portion of the fragrant element is positioned below the ignitable end (portion of 16 is below 108), the fragrant material extends circumferentially around the ignitable end (16 in figure 4), the receptacle in figure 7 includes a depressed area 22 such that this area will prevent the fragrant material from falling out of the receptacle and a pull-tab disposed within the receptacle beneath the fragrant element capable of holding such a material (bottom of 3 in figure 12).

With respect to claims 5 and 12-14, Tendick, Sr. teaches the following: the absorbent end includes first and second absorbent ends (unlabeled ends of 38 in figure 3) and a midpoint disposed between both absorbent ends (middle of ignitable loop 38), the ignitable includes a loop (38) formed at the midpoint, a polypropylene copolymer (col.3, lines 17-19), a diathermic cap positioned over the fragrant polymeric material and

is in substantially continuous contact with such material (28), vents (40) and a third surface of the polymeric material is in substantially continuous contact with the cap (the unlabeled inner surface of 44 is in continuous contact with 28).

4. Claims 17-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeJeune et al (U.S.P.N. 6,290,914) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claim 17; LeJeune et al discloses a wick col.1, lines 60-64) including the following: a receptacle (is made up of 20 and 102 such that in col.3, lines 13-15, LeJeune et al teaches that both parts are fastened together. The examiner considers 20 and 102 in figure 6 as equivalent to the receptacle in the instant claims. The receptacle is intrinsically diathermic in order to heat the fragrant material. See lines 19-22) with an exterior perimeter wall (unlabeled exterior wall of 20) and an opposing interior wall (unlabeled interior wall of 20), a fragrant element disposed within the receptacle (16 or 28) such that the three surfaces of the fragrant element is in substantially continuous contact with the perimeter wall (the three unlabeled surfaces of 28 in figure 12 are in continuous contact with the three unlabeled surfaces of 26), a wick with an ignitable and an absorbent ends (108, 106 and the not shown remaining absorbent part of the wick immersed in the fuel in100), a container holding fuel (100), the ignitable end extends through the interior wall of the receptacle (108 in figure 6 extends through the unlabeled bottom interior wall of the receptacle), However, with respect to claim 17, LeJeune et al fails to specifically teach the use of polymeric material. Tendick, Sr., which is in the art of dispensing fragrance material, teaches the use of polymeric material (col.2, lines 62-65). As a result, it would have been obvious to

one having ordinary skill in the art at the time the invention was made to modify the apparatus of LeJeune et al to substitute one fragrant element for another since polymeric material has a lower cost and easier to be shaped into various configurations than other material (Tendick, Sr., col.3, lines 19-21).

With respect to claims 18-21, 24-25, 27 and 29, LeJeune et al teaches the following: ignitable end extends through a portion of the receptacle (102, 20 and 106), the container including an opening (the unlabeled top of 100), the receptacle includes a vent (the unlabeled opening in the interior wall of the receptacle for allowing the wick to go through), a portion of the fragrant element is positioned below the ignitable end (portion of 16 is below 108), the fragrant material extends circumferentially around the ignitable end (16 in figure 4), the receptacle in figure 7 includes a depressed area 22 such that this area will prevent the fragrant material from falling out of the receptacle and a pull-tab disposed within the receptacle beneath the fragrant element capable of holding such a material (bottom of 3 in figure 12).

With respect to claims 22-23 and 26, Tendick, Sr. teaches the following: the absorbent end includes first and second absorbent ends (unlabeled ends of 38 in figure 3) and a midpoint disposed between both absorbent ends (middle of ignitable loop 38), the ignitable includes a loop (38) formed at the midpoint, a polypropylene copolymer (col.3, lines 17-19), a diathermic cap positioned over the fragrant polymeric material and is in substantially continuous contact with such material (28) and vents (40).

5. Claims 30-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeJeune et al (U.S.P.N. 6,290,914) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claim 30; LeJeune et al discloses a fragrance assembly (10 and 100) including the following: a diathermic receptacle (is made up of 20 and 102 such that in col.3, lines 13-15, LeJeune et al teaches that both parts are fastened together. The examiner considers 20 and 102 in figure 6 as equivalent to the receptacle in the instant claims. The receptacle is intrinsically diathermic in order to heat the fragrant material. See lines 19-22) with an exterior perimeter wall (unlabeled exterior wall of 20) and an opposing interior wall (unlabeled interior wall of 20), a fragrant element disposed within the receptacle (16 or 28) such that the three surfaces of the fragrant element is in substantially continuous contact with the perimeter wall (the three unlabeled surfaces of 28 in figure 12 are in continuous contact with the three unlabeled surfaces of 26), a wick with an ignitable and an absorbent ends (108, 106 and the not shown remaining absorbent part of the wick immersed in the fuel in100), a container holding fuel (100) and the ignitable end extends through the interior wall of the receptacle (108 in figure 6 extends through the unlabeled bottom interior wall of the receptacle). However, with respect to claim 30, LeJeune et al fails to specifically teach the use of polymeric material. Tendick, Sr., which is in the art of dispensing fragrance material, teaches the use of polymeric material (col.2, lines 62-65). As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of LeJeune et al to substitute one fragrant element for another since polymeric material has a lower cost and easier to be shaped into various configurations than other material (Tendick, Sr., col.3, lines 19-21).

With respect to claims 31, 33 and 35, LeJeune et al teaches the following: ignitable end extends through a portion of the receptacle (102, 20 and 106), fragrance material includes polypropylene, and the receptacle in figure 7 includes a depressed area 22 such that this area will prevent the fragrant material from falling out of the receptacle and a pull-tab disposed within the receptacle beneath the fragrant element capable of holding such a material (bottom of 3 in figure 12).

With respect to claim 32, Tendick, Sr. teaches that the polymeric fragrance element includes a polypropylene copolymer (col.3, lines 17-19).

6. Claims 36-40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeJeune et al (U.S.P.N. 6,290,914) in view of Tendick, Sr. (U.S.P.N. 4,892,711).

With respect to claim 36; LeJeune et al discloses a method of adding a fragrance material to a liquid candle (col.1, lines 60-64) including the following: a receptacle (is made up of 20 and 102 such that in col.3, lines 13-15, LeJeune et al teaches that both parts are fastened together. The examiner considers 20 and 102 in figure 6 as equivalent to the receptacle in the instant claims. The receptacle has an exterior perimeter wall (unlabeled exterior wall of 20) and an opposing interior wall (unlabeled interior wall of 20), a fragrant element disposed within the receptacle (16 or 28) such that the three surfaces of the fragrant element is in substantially continuous contact with heating a fragrant material and shaping the heated fragrant material to the dimensions of the receptacle (col.3, lines 44-49 such that the material intrinsically must have been heated in order to pour it) so that all the three surfaces of the material are substantially in continuous contact with the walls of the receptacle (28). However, with respect to

claim 36, LeJeune et al fails to specifically teach the use of polymeric material. Tendick, Sr., which is in the art of dispensing fragrance material, teaches the use of polymeric material (col.2, lines 62-65). As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of LeJeune et al by substituting one fragrant element for another since polymeric material has a lower cost and easier to be shaped into various configurations than other material (Tendick, Sr., col.3, lines 19-21).

With respect to claims 37-40 and 42, LeJeune et al teaches the following: ignitable end extends through a portion of the receptacle (102, 20 and 106), the container including an opening (the unlabeled top of 100), the receptacle includes a vent (the unlabeled opening in the interior wall of the receptacle for allowing the wick to go through), a portion of the fragrant element is positioned below the ignitable end (portion of 16 is below 108), the fragrant material extends circumferentially around the ignitable end (16 in figure 4), the receptacle in figure 7 includes a depressed area 22 such that this area will prevent the fragrant material from falling out of the receptacle, a pull-tab disposed within the receptacle beneath the fragrant element capable of holding such a material (bottom of 3 in figure 12), softening and melting the fragrant material (the material intrinsically must have been softened and melted in order to pour it in the receptacle as taught in col.1, lines 60-61), pour molding (col.1, lines 60-61) and coupling the receptacle to a fuel container (col.2, lines 54-56 such that the chimney retainer 102 is part of the oil lamp 100).

7. Claims 15, 28, 34 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeJeune et al (U.S.P.N. 6,290,914) in view of Tendick, Sr. (U.S.P.N. 4,892,711) and further in view of Imus (U.S.P.N. 5,368,419).

With respect to claims 15, 28, 34 and 41, both LeJeune et al and Tendick, Sr. fail to teach a pull-tab integrated within the fragrant polymeric element. However, Imus, which is in the art of dispensing insecticides, teaches having a pull-tab (64) attached to a wax material (col.5, lines 8-12). Thus, it would have obvious to one having ordinary skill in the art to modify the apparatus and method of LeJeune et al to include a pull-tab to facilitate manual removal of the wax material (Imus, col.5, lines 10-12).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McAuley et al (U.S.P.N. 6,254,248), Ferguson (U.S.P.N. 6,555,069), Petrusis (U.S.P.N. 2,254,906) and Bureau et al (U.S.P.N. 5,840,257) disclose similar structural limitations in the art of dispensing.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 8:30-5:00.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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